the mortgage void as in defraud of creditors. The evidence was rejected and the defendant excepted. *Held*, that the exception be sustained. *Hannaford* v. *Charles River Trust Co.*, 134 N. E. 795 (Mass.).

It has long been decided that a judgment cannot be used as evidence against a stranger to the action in which the judgment was rendered. *The Duchess of Kingston's Case*, 20 How. St. Tr. 355, 537n. From this it was loosely stated that a judgment is admissible to prove the facts on which it is based only in a suit between the parties to the original action. This rule was then applied to exclude a judgment even when offered against a party to the action in which it was rendered although he had every opportunity to litigate the facts which the judgment is offered to prove. *Lillie* v. *Woodmen of Am.*, 89 Neb. 1, 130 N. W. 1004; *Stone* v. *State*, 138 N. Y. 124, 128, 33 N. E. 733, 734. See *Comm.* v. *Cheney*, 141 Mass. 102, 106, 6 N. E. 724, 727. Courts endeavor to justify this result by arguing that the rule is unjust unless its operation is mutual. *Winston* v. *Starke*, 12 Gratt. (Va.) 317, 319. See 2 BLACK, JUDGMENTS, 2 ed. § 608. The reasoning is questionable and there is need of liberalization. See 2 TAYLOR, EVIDENCE, 11 ed., 1144; 5 WIGMORE, EVIDENCE, 2 ed. § 1347. Some courts have taken this step. *Estate of Crippen* [1911] P. 108; *Mash* v. *Darley*, [1914] 1 K. B. 1. See *Vulcan etc. Co.* v. *Assmant*, 185 App. Div. 399, 402, 173 N. Y. Supp. 334, 336. Unfortunately the court in the principal case can hardly be said to go along with these courts. The decree was offered not to prove the fraud upon which it was based but to prove the fact of its own existence and the legal consequences thereof, *i.e.*, that the mortgage was unenforceable in the plaintiff's hands and hence of no value to him. For such purpose a judgment is always admissible. *Barkaloo's Adm'r.* v. *Emerick* 18 Ohio 268. See *Spencer* v. *Dearth*, 43 Vt. 98, 105. See 2 BLACK, *op. cit.* § 604.

INITIATIVE AND REFERENDUM — POWERS OF THE LEGISLATURE — LEGISLATING ON SUBJECT MATTER OF REFERRED MEASURE. — The relator seeks a *mandamus* to compel the secretary of state to file his declaration of candidacy for a judgeship in a certain circuit. An act of the legislature abolishing this circuit had been suspended by a petition for reference to the voters. Before its submission, the legislature in special session passed a new bill purporting to repeal it, but reënacting most of its provisions. The Missouri Constitution provides: "Any measure referred to the people shall take effect and become the law when it is approved by a majority of votes cast thereon, and not otherwise. . . This section shall not be construed to deprive any member of the legislative assembly of the right to introduce any measure." (MO. CONST. Art. 4, § 57.) *Held*, that a *mandamus* should issue. *State ex rel. Drain* v. *Becker*, 240 S. W. 229 (Mo.).

Since the legislature cannot deprive the people of the right to vote on a submitted act, the second act must be invalid in so far as it purports to repeal the referred measure. See MO. CONST., Art. 4, § 57. The principal case goes beyond this and deprives the legislature of the power to legislate on the subject matter of the measure suspended. Only clear wording of a state constitution warrants such a restriction. See James B. Thayer, "American Doctrine of Constitutional Law," 7 HARV. L. REV. 129. It is not warranted by the Missouri Constitution. See MO. CONST., Art. 4, § 57. It is not required to protect the people's rights, for the new act may also be suspended, or by approving or rejecting the old the people may control the new by the ordinary operation of subsequent legislation. The contention that to uphold the legislature here would promote friction with the people loses force under the almost universal rule that the legislature may repeal at once any act of the people. See

In re Senate Resolution, No. 4, 54 Colo. 262, 130 Pac. 333; *State ex rel. Halliburton* v. *Roach*, 230 Mo. 408, 429, 130 S. W. 689, 693. Probably the *mala fide* passage by the assembly of an identical measure should not be valid. But where the legislature in good faith has passed a measure with substantially different features its constitutionality should be unquestioned. Though the principal case is a pioneer on this question, a contrary view has been taken in recent cases involving municipal ordinances. *State ex rel. Megnella* v. *Meining*, 133 Minn. 98, 157 N. W. 991; *Ex parte Statham*, 31 Cal. Dec. 193, 187 Pac. 986.

INSURANCE — MARINE INSURANCE — COLLISION WHILE OPERATING IN CONVOY. — Two convoys, guarded by war vessels and sailing without lights under naval orders, met in waters of a war zone in 1918. A head-on collision resulted in which the *Napoli* was sunk. The cargo was covered by a marine policy issued by the libellant with the usual clause, "free from all consequences of hostilities or warlike operations," and by a "war risk" policy issued by the respondent, covering loss from "all acts in prosecution of hostilities between belligerent nations." Liability being admitted, the "marine" underwriter paid half the loss and now libels the "war risk" underwriter claiming that the loss was proximately caused by, and was a consequence of, an act of hostility. *Held*, that the libel be dismissed. *Queen Ins. Co.* v. *Globe & Rutgers Fire Ins. Co.*, 278 Fed. 770 (S. D. N. Y.).

This decision is in harmony with the English cases construing similar "war risk" clauses, and is open to the criticism that has been directed at those cases. See 33 HARV. L. REV. 706. Indeed the court says that the result of the English cases is unsatisfactory, but feels bound to follow them in this pioneer action in this country in the interest of "uniformity of view in a commercial world." Since, however, the events that gave rise to this action and to the English cases were substantially contemporaneous, and, since the clauses in the policies were not inserted in the light of judicial interpretation, no fault could be found with a decision sustaining the libel in the principal case.

INTERSTATE COMMERCE — CONTROL BY CONGRESS — LIABILITY OF TERMINAL CARRIER. — The plaintiff shipped horses over connecting lines under a through bill of lading which limited the liability of all, except the initial carrier, to accidents happening upon the connecting carrier's own line. The horses became diseased through the negligence of an intermediate carrier. The plaintiff sued the terminal carrier and recovered. *Held*, that the judgment be reversed. *Oregon-Washington R. R. & N. Co.* v. *McGinn*, 42 Sup. Ct. Rep. 332.

The plaintiff shipped apples over connecting lines. There was evidence to show that they were in good condition when delivered to the initial carrier, but frozen when delivered by the defendant, the terminal carrier. Where the damage occurred was not shown. The plaintiff sued the terminal carrier and recovered. *Held*, that the judgment be affirmed. *Chicago & N. W. Ry. Co.* v. *Whitnack Produce Co.*, 42 Sup. Ct. Rep. 328.

At common law, in the absence of special stipulation, connecting carriers are bound to carry safely only over their own line and to deliver safely to the next connecting carrier. *Myrick* v. *Michigan Cent. R. R. Co.*, 107 U. S. 102, 107. When, however, goods are shown to have been delivered to the initial carrier in good condition, there is a presumption that any injury to them happened on the line of the terminal carrier and it is liable for such injuries in the absence of evidence that it received the goods in a damaged condition. *Moore* v. *N.Y., N.H. & H. R.R. Co.*, 173 Mass. 335, 53 N. E. 816. In this state of the common law the Carmack